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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CRAYA C. CARON,

Plaintiff and Appellant,

v.

MERCEDES-BENZ USA LLC, et al.,

Defendants and Respondents.

G055632, consol. w/ G055991

(Super. Ct. No. 30-2016-00840325)

O P I N I O N

Appeal from judgments and a post-judgment order of the Superior Court of Orange County, Peter J. Wilson, Judge. Affirmed.

Craya C. Caron, in pro. per., for Plaintiff and Appellant.

Universal & Shannon, Jon D. Universal and James P. Mayo for Defendant and Respondent Mercedes-Benz USA, LLC.

Crafts Law Firm, Angelo A. Duplantier III and Warren Fujimoto for
Defendant and Respondent Fletcher Jones Motor Cars, Inc.

* * *

Craya C. Caron appeals from the trial court's entry of separate judgments in favor of defendants Fletcher Jones Motor Cars, Inc. (FJMC) and Mercedes-Benz USA, LLC (MBUSA) after sustaining the defendants' demurrers to Caron's third amended complaint without leave to amend. She also appeals from the trial court's order on her motion to tax FJMC's costs. Caron contends the court erred in concluding the governing statutes of limitations precluded her claims and in failing to consider her evidence to tax the costs FJMC asserted as a prevailing party. As we explain, the court correctly applied the respective limitations periods, and the comments Caron asserts the court made about the comparatively small sum of costs at issue do not suggest the court ignored her evidence. We therefore affirm the judgments and post-judgment order.

FACTUAL AND PROCEDURAL BACKGROUND

Caron filed her initial complaint on March 14, 2016, against FJMC alleging breach of contract, negligent misrepresentation, and violations of federal and state odometer statutes. According to the complaint, Caron purchased a 2006 Mercedes-Benz E-350 that FJMC advertised as a certified pre-owned (CPO) vehicle with 15,802 miles on the odometer in June 2008. By May 2011, due to repeated problems she experienced with the vehicle's mechanical and electrical components, Caron "became suspicious" that the vehicle was not of the quality represented to her by the dealer and that the odometer had been rolled back.

Specifically, Caron alleged that by "May 17, 2011, for many of the reasons stated herein, Plaintiff first became suspicious that there *could be a possibility* that her Vehicle's stated mileage might not be accurate and that the Vehicle's odometer, drive-train computer and service records might have been intentionally modified in order

to circumvent the detection of the Vehicle's actual accumulated mileage prior to her purchase of the Vehicle." (Original italics; capitalization modified to initial caps here and throughout opinion.)

Based on her suspicions, Caron "beg[a]n an earnest investigation into her Vehicle's service history by obtaining a CarFax Vehicle Report and consulting with a number of different Mercedes-Benz Dealerships regarding the recordation, storage and/or availability of service records for her Vehicle." Caron alleged that her investigation supported her suspicions because the vehicle history report "showed missing mileage information." Her suspicions that her vehicle fell below CPO standards also grew when "the Mercedes Benz Dealerships outside of FJMC were not able to access service records for her Vehicle that were purportedly performed at FJMC."

Caron estimated that at the time she purchased the vehicle in June 2008 the actual mileage on the vehicle "could not have been *any less than* 115,000 miles," almost 100,000 miles more than shown on the odometer. (Original italics.) She calculated the figure "from an assumption that the Previous-Owner drove a daily rate of 145 miles per day based on 24 average driving days per month" during the time period before she owned the vehicle. Caron's complaint provided no other basis for her mileage estimate.

As recounted in her complaint, Caron continued to drive the vehicle for another 19 months after her May 2011 investigation, until January 2013 when the vehicle suffered a blown engine due to a "burnt engine valve." The vehicle then had 107,000 miles on the odometer. In March 2013, Caron returned the vehicle to FJMC and demanded a refund of all of her payments; FJMC refused.

FJMC demurred to Caron's complaint on several grounds, including that her causes of action were time-barred. When the trial court continued the hearing on the demurrer, Caron filed a first amended complaint (FAC) before the rescheduled hearing, again against FJMC only.

The FAC continued to allege the mechanical and electrical component failures that Caron “immediately began to experience” upon purchasing the vehicle justified her May 2011 investigation, but added that she discontinued the investigation because, although the records she uncovered “appeared to be suspicious, [they] were not conclusive.” Having tried to obtain FJMC service records from other Mercedes-Benz dealerships, including those in Long Beach and the South Bay, Caron alleged she faced “what was appearing to be an almost impossible task of obtaining any reliable information” Thus, she decided “to continue driving her Vehicle and *hoped* that her concerns about her Vehicle were not correct.” (Original italics.)

FJMC again demurred. At the demurrer hearing, the trial court agreed Caron’s claims ran afoul of the governing limitations period, but gave her leave to amend. The court explained that “[w]hen a plaintiff suspects a factual basis, as opposed to a legal theory, or its elements, even if plaintiff lacks knowledge thereof – when simply put, plaintiff at least ‘suspects . . . that someone has done something wrong’ to him, a cause of action accrues.” The court granted Caron leave to amend “as to the foregoing causes of action only,” cautioning her about the sham pleading doctrine, under which “‘a pleader cannot circumvent prior admissions by the easy device of amending a pleading *without explanation.*’” (Original italics.)

In a second amended complaint (SAC), Caron added MBUSA, Mercedes-Benz of Long Beach (MB-LB), and Mercedes-Benz of South Bay (MB-SB) as defendants. She added new causes of action—fraudulent concealment (against FJMC, MB-LB, and MB-SB) and negligence (against FJMC and MBUSA). Caron alleged she was unaware of facts to support causes of action against FJMC for breach of contract, negligent misrepresentation, and statutory odometer violations until August 2013, when FJMC produced its service records through discovery. She also added a new cause of action against FJMC for unfair competition or business practices.

FJMC demurred again. This time the trial court sustained FJMC's demurrer without leave to amend as to the three original causes of action. The court also granted FJMC's motion to strike the newly asserted claims, but without prejudice to Caron filing a properly noticed motion for leave to amend as to the new claims. MB-LB also filed a demurrer to the SAC, which was later withdrawn as moot per the court's ruling on FJMC's demurrer.

Over FJMC's and MBUSA's separate oppositions, the trial court granted Caron's motion for leave to file a third amended complaint (TAC). The TAC asserted six new causes of action, as follows: (1) Unfair Competition Law violations (hereafter UCL; Bus. & Prof. Code, § 17200, et. seq.); (2) violation of the Consumer Legal Remedies Act (hereafter CLRA; Civ. Code, § 1750 et. seq.); (3) restitution (Civ. Code, § 1780, subd. (a)(3)); (4) negligence; (5) violation of Vehicle Code statutes, including section 11713.18; and (6) fraudulent concealment. Caron alleged all six causes of action against FJMC and only the third, fourth, and fifth against MBUSA. Caron did not name MB-LB or MB-SB in the newly filed TAC.

FJMC and MBUSA demurred to the TAC. In a detailed ruling, the trial court sustained the demurrers as to all causes of action, without leave to amend. The court explained that the first four causes of action, namely, those under the UCL, the CLRA, and for restitution and negligence, "are all based on the allegation defendants improperly certified, advertised, and/or represented the subject vehicle to be 'Certified Pre-Owned' (CPO) when they knew or should have known the vehicle was not of the quality necessary to be CPO."

The court on its own motion took judicial notice of Caron's original and amended complaints. Because "[t]he facts alleged in Plaintiff's prior pleadings show the statutes of limitation with respect to each of these claims began to [run] at least as of May 2011, when Plaintiff suspected the subject vehicle was not of the quality . . . represented," and because the limitations period for her first four causes of action ranged

from two to four years, the court concluded these claims were too late by “approximately one to three years” when she filed her complaint in March 2016.

The trial court similarly explained its demurrer ruling on the fifth and sixth causes of action. The fifth cause of action involved alleged statutory violations both for “failing to provide plaintiff with the requisite CPO documents at the time of the sale” (Veh. Code, § 11713.18) and for “selling plaintiff a vehicle without a front license plate” (Veh. Code, §§ 5200, 5201). The court assumed for the sake of argument that these statutory provisions created a private right of action, but determined the passage of time was still fatal. That is, if Caron did not receive the CPO documents and the vehicle did not have a front license plate at the time of sale, as she alleged, the limitations period for statutory violations gave her three years from her purchase date in June 2008 to make a claim. She did not file her claims until nearly eight years later in March 2016.

Likewise, the court explained because Caron’s sixth cause of action for ““fraudulent concealment, suppression of evidence”” was based on FJMC’s failure to provide the CPO documents at the time of sale, it accrued then. Quoting the TAC, the trial court found the sixth cause of action to be “based on the allegation Fletcher Jones ‘failed to disclose, thus [purposefully] concealed[,] the CPO disclosure documents prior to [and/or at the time of] the sale of the vehicle’ . . . because Fletcher Jones knew the information contained in those documents would reveal numerous mechanical, electrical, and bodily damage defects,” “particularly the CPO ‘Evaluation, Inspection and Repair documents . . . pertain[ing] to the “check engine light” analysis”

In rejecting the sixth cause of action, the court explained the alleged fraud occurred when Caron did not “receive[] the requisite CPO documents at the time of the sale on June 23, 2008 [citing TAC], and the facts alleged in Plaintiff’s prior pleadings show Plaintiff suspected the subject vehicle was not of the quality it was represented to be at least as of May 2011 [citing SAC].” The court further explained, “Thus, even if the court were to assume that Plaintiff somehow did not reasonably discover the alleged

fraud until May 2011, Plaintiff had three years from that date to bring this claim . . . by May 2014. Plaintiff failed to do so until March 14, 2016, nearly two years too late.”

Finding that Caron failed to assert viable causes of action, the trial court entered judgments of dismissal in favor of FJMC and MBUSA on September 18, 2017 and September 21, 2017, respectively. FJMC thereafter sought \$6,738.91 in costs, which Caron opposed with a motion to tax costs. After the hearing on costs, the court pared FJMC’s request by \$395.71, and entered a costs order in the reduced amount. Caron now appeals.

DISCUSSION

Caron contends the trial court erred in sustaining defendants’ demurrers and in failing to consider her opposition to FJMC’s costs motion. We address these contentions in turn, beginning with the demurrer issue.

1. *Demurrer*

“We review the ruling sustaining [a] demurrer de novo, exercising independent judgment as to whether the complaint states a cause of action as a matter of law.” (*Kan v. Guild Mortgage Co.* (2014) 230 Cal.App.4th 736, 740.) “[A] plaintiff may not discard factual allegations of a prior complaint, or avoid them by contradictory averments, in a superseding, amended pleading.” (*California Dental Assn. v. California Dental Hygienists’ Assn.* (1990) 222 Cal.App.3d 49, 53, fn. 1.) Although we review the complaint de novo, “[t]he plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of the cause of action and overcoming all of the legal grounds on which the trial court sustained the demurrer” (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1490-1491.)

Caron contests the trial court’s demurrer ruling on six grounds, five of which relate to her degree of knowledge required to trigger the governing statutes of limitations. First, she argues the trial court erred in determining “that at a time 4 years

prior to filing of the lawsuit, [she] possessed *sufficient knowledge* to conclude that a *legally cognizable* cause of action might have existed.” (Second italics added.) Caron’s suggestion that a plaintiff must have knowledge his or her claim is “legally cognizable” is without merit.

Legal knowledge is not a factor for assessing when a limitations period begins to run. Otherwise, “[a]ny plaintiff could simply allege ignorance of his or her legal rights against a particular defendant.” (*McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804.) Instead, “it is facts and events which inform a person that something is wrong and should be looked into, . . . rather than knowledge of its legal significance that starts the running of the statute of limitations.” (*Call v. Kezirian* (1982) 135 Cal.App.3d 189, 197.)

Second, Caron argues her knowledge of underlying facts or events did not rise to the objective level she asserts is required when criminal conduct may be involved. She claims the trial court “improperly applied a civil standard of [her] *mere suspicion*” that she had been wronged in purchasing a defective vehicle, rather than analyzing whether she had objectively reasonable “probable cause” to believe “the *crime* of odometer tampering” had occurred under federal and state law proscribing such conduct. (Original italics.) She relies on the Fourth Amendment’s “guarantee[to] all citizens [of] protection from criminal inquiries against them unless there is ‘probable cause’ for such inquiry.”

It is true that probable cause in the criminal context is an objective test. “Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” (*Whren v. U.S.* (1996) 517 U.S. 806, 813.)

The Fourth Amendment precludes unreasonable searches or seizures by government authorities. (U.S. Const., 4th Amend.) It has no application here to Caron’s attempt to file a civil action seeking civil redress against private commercial defendants rather than public officials. Caron confuses the objective standard necessary to constitute

probable cause in the criminal context with the established standards governing when a civil cause of action accrues.

Statutes of limitations begin to run when the underlying cause of action accrues. (Code Civ. Proc., § 312; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 (*Fox*).) One purpose of a statute of limitations generally is “to give defendants reasonable repose, thereby protecting parties from ‘defending stale claims.’” (*Ibid.*) “Generally speaking, a cause of action accrues at ‘the time when the cause of action is complete with all of its elements’” (*ibid.*), including breach of duty or harm if they are elements of the claim.

When all requisite elements are complete but the plaintiff does not realize it, the so-called discovery rule “postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).) The rule “is based on the notion that statutes of limitations are intended to run against those who fail to exercise reasonable care in the protection and enforcement of their rights; therefore, those statutes should not be interpreted so as to bar a victim of wrongful conduct from asserting a cause of action before he could reasonably be expected to discover its existence.” (*Saliter v. Pierce Brothers Mortuaries* (1978) 81 Cal.App.3d 292, 297.)

Caron’s attempt to engraft criminal law’s objective test for probable cause into the civil action discovery rule fails because the established test allows for either objective or subjective knowledge. “This [discovery] rule sets forth two alternate tests for triggering the limitations period: (1) a subjective test requiring actual suspicion by the plaintiff that the injury was caused by wrongdoing; and (2) an objective test requiring a showing that a reasonable person would have suspected the injury was caused by wrongdoing. [Citation.] *The first to occur under these two tests begins the limitations period.*” (*Kitzig v. Nordquist* (2000) 81 Cal.App.4th 1384, 1391, italics added.)

In other words, the discovery rule incorporates a “knew-or-should-have-known” standard that can be satisfied under *either* a subjective test (the subject, i.e., the plaintiff, knew of or suspected injury) or an objective test (a reasonable person would have known or suspected injury). Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1111 (*Jolly*).) Because the first of these to occur commences the limitations period for a cause of action, “[o]nce the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights.” (*Ibid.*) Caron’s claim that an objective test is required finds no support in established law.

Moreover, we are puzzled by the argument. Caron does not disavow her pleadings alleging that early on she suspected injury in the form of a vehicle that was not up to certified pre-owned standards or had its odometer rolled back. Nor does she now claim that her suspicions were unreasonable. Indeed, in light of the many problems Caron faced with her vehicle, there is nothing to suggest her suspicions that the vehicle was defective or below CPO standards were objectively unreasonable. Accordingly, even if an objective standard to suspect injury or wrongdoing did apply, it would not aid her.

Caron’s third contention related to the sufficiency of her knowledge also fails. She argues the trial court “improperly determined that the *knowledge* necessary to determine that someone might have tampered with a modern computerized motor vehicle is knowledge that [a] reasonable person should readily possess.” (Original italics.) But in the same way no specialized legal knowledge is necessary for a cause of action to accrue, no technical or “computerized” knowledge is necessary.

Fourth, Caron asserts “[t]here is a conflict of opinion in appellate court decisions concerning applicable standards when the rules of *delayed discovery* should be applied.” (Original italics.) She suggests that “more recent case[s] than what . . . the

court apparently relied upon” required overruling the demurrers and that “[t]his Court must resolve the conflicting caselaw criteria upon which a party’s *knowledge [is] sufficient . . . to support a cause of action . . .*” (Original italics.)

Caron does not identify the allegedly “conflicting caselaw” to which she refers, but her challenge appears to be part of her overall attack on subjective “mere suspicion” of harm as a basis for a cause of action to accrue. In any event, the “more recent” cases on which she relies, such as the Supreme Court’s decision in *Fox*, do not conflict with the older cases she identifies, such as *Jolly* and *Norgart*. In fact, the newer cases cite and rely on the former cases as valid precedent. In favorably citing its prior opinions in *Jolly* and *Norgart*, for example, *Fox* explained, “[W]e do not take a hypertechnical approach to the application of the discovery rule. Rather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them.” (*Fox, supra*, 35 Cal.4th at p. 807.)

Fifth, Caron contends “[t]he trial court improperly applied the same statute of limitations reasoning to all of Appellant’s claims.” As discussed, however, the same reasoning *does* apply to all causes of action; they accrue when a plaintiff actually suspects injury or wrongdoing, or should reasonably suspect it. (*Jolly, supra*, 44 Cal.3d at p. 1111.)

Consequently, there is no merit in Caron’s claim the trial court “improperly made a *subjective assessment* concerning” whether her fraudulent concealment cause of action accrued. (Original italics.) Her fraudulent concealment allegation arose out of FJMC’s failure to provide the CPO documents at the time of sale in June 2008. Or at the latest, when the litany of component failures “show Plaintiff suspected the subject vehicle was not of the quality it was represented to be at least as of May 2011,” as the trial court explained. The fact that documents Caron claims were concealed at the outset of her purchase, and allegedly constituted fraudulent concealment, were later disclosed during

the discovery process does not toll the statute of limitations to the disclosure date. Compliance with civil discovery procedures is not itself a new instance of harm demonstrating fraudulent concealment. The alleged injury—concealment, and reason to suspect it—had already occurred. In sum, Caron’s five interrelated challenges to the subjective knowledge of harm standard that the trial court applied in sustaining the demurrers are each without merit.

Caron’s sixth challenge is also unfounded. In an argument she did not raise below, Caron asserts “[t]he trial court failed to take into consideration that the applicable statute of limitations should have been tolled during a time that Appellant had filed an odometer tampering complaint with the California DMV’s Investigation Unit.” Caron’s second amended complaint alleged she filed her odometer complaint with the DMV “[o]n or about April 11, 2013,” and that, by June 20, 2014, “after spending a *limited amount of time* and *without ever inspecting* the Vehicle,” the DMV “concluded that there was no evidence that the Vehicle’s indicated odometer reading was not accurate.” (Original italics.)

Even assuming this year-long administrative proceeding had a tolling effect, adding a year does not aid Caron. The statute of limitations under federal law for odometer tampering is two years after the claim accrues. (49 U.S.C. § 32710, subd. (b).) There does not appear to be a statute of limitations specific to California’s odometer provisions (Veh. Code, § 28050 et seq.), so the general limitations period of three years for statutory violations applies (Code Civ. Proc., § 338, subd. (a)). The trial court properly found Caron’s claim accrued in May 2011, when she strongly suspected odometer tampering and began investigating that possibility. With a tolling period of just over one year, Caron’s complaint would have been due by approximately July 2015. She did not file her initial complaint until March 2016. Consequently, there is no basis to order remand to allow Caron leave to amend to assert her tolling claim.

2. *Costs*

Caron contends the trial court's cost order must be reversed because the court did not consider her opposition. She asserts the court did not "analyz[e] Appellant's documented evidence in support of [her] Motion to Tax Costs." She relies on quotations she attributes to the court at the hearing on her motion, including that "the costs were not as much as most cases I see come through my courtroom."

The court advised the parties "reporters are not available in this department for *any* proceedings" (bold and underlining omitted), and further notified the parties of a court-approved list of reporters that could be privately retained. The record reflects no court reporter was present at the hearing. Nor have we received an agreed or settled statement of the oral proceedings, as required for appellate consideration in the absence of a reporter's transcript. (Cal. Rules of Court, rule 8.120(b).) Caron asserts the court concluded, "[C]onsidering how much money I have seen spent in most civil cases on discovery, I really don't think that we are talking about that much money compared to some of these other cases—so I am included [*sic*] to just leave the cost memorandum alone because it is just not as much money compared to the other cases I usually see."

Contrary to Caron's claim, the trial court's ruling and comments in its minute order reflect that it considered the parties' evidence. Caron in her motion to tax costs opposed \$395.71 in "subpoen[a]" expenses for a "Rhonda McCoy" that defendant had listed under "Deposition costs." Caron suggested in her motion to tax costs that because the "usual cost for a process server . . . is \$35 - \$60, . . . [i]t appears that Defendants have *misplaced the decimal point* during their calculation on the cost amount for the cost of serving [DMV] Inspector McCoy." (Original italics.) In its ruling, the court did not simply reduce the amount by a decimal point as Caron requested. The court struck it altogether.

The trial court's minute order also states it "allow[ed] all remaining costs in the total amount of \$6,343.20, which the court finds were reasonably necessary to the conduct of the litigation and reasonable in amount." We presume the court performed its duty (Evid. Code, § 664) in reviewing Caron's costs opposition. Nothing in the record suggests otherwise, and Caron does not make any attempt on appeal to explain why the court was required to grant her taxing motion. It is the trier of fact's exclusive province to weigh the evidence and credibility of witnesses. (*Evje v. City Title Ins. Co.* (1953) 120 Cal.App.2d 488, 492.) The court therefore was entitled to credit the declaration FJMC's counsel submitted to support its costs.

DISPOSITION

The judgments and post-judgment order are affirmed. Respondents are entitled to their costs on appeal.

GOETHALS, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.